

E-Filed 6/29/10

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

RODNEY K. WINDSOR,
Plaintiff,

No. C 10-0368 RS (PR)

**ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND**

v.

SAN QUENTIN STATE PRISON, and
CALIFORNIA DEPARTMENT OF
CORRECTIONS,
Defendants.

INTRODUCTION

This is a civil rights action filed by a *pro se* state prisoner pursuant to 42 U.S.C. § 1983. The Court now reviews the complaint pursuant to 28 U.S.C. § 1915A(a).

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may

1 be granted or seek monetary relief from a defendant who is immune from such relief. *See id.*
 2 § 1915A(b)(1),(2). *Pro se* pleadings must be liberally construed. *See Balistreri v. Pacifica*
 3 *Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

4 A “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim
 5 to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009)
 6 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial
 7 plausibility when the plaintiff pleads factual content that allows the court to draw the
 8 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting
 9 *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal
 10 conclusions cast in the form of factual allegations if those conclusions cannot reasonably be
 11 drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th
 12 Cir. 1994).

13 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
 14 elements: (1) that a right secured by the Constitution or laws of the United States was
 15 violated, and (2) that the alleged violation was committed by a person acting under the color
 16 of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

17 **B. Legal Claims**

18 Plaintiff’s complaint is incoherent, being a list of multiple undetailed conclusory
 19 allegations against many unspecified defendants regarding unrelated acts and omissions. As
 20 such, plaintiff’s complaint does not contain sufficient factual matter to state a claim to relief
 21 that is plausible on its face. Accordingly, the complaint is DISMISSED with leave to amend.
 22 Plaintiff shall file an amended complaint within 30 days from the date this order is filed.
 23 Failure to file an amended complaint by such time will result in dismissal of the action
 24 without further notice to plaintiff. The Court reminds plaintiff that he must allege clearly
 25 specific facts regarding specific defendants in order to state a plausible claim for relief. The
 26 Court further reminds plaintiff that unrelated claims against different defendants must be
 27 alleged in separate complaints. *See George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).
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1 The first amended complaint must include the caption and civil case number used in
2 this order (10-0368 RS (PR)) and the words FIRST AMENDED COMPLAINT on the first
3 page. Because an amended complaint completely replaces the previous complaints, plaintiff
4 must include in his first amended complaint all the claims he wishes to present and all of the
5 defendants he wishes to sue. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992).
6 Plaintiff may not incorporate material from the prior complaint by reference. Failure to file
7 an amended complaint in accordance with this order will result in dismissal of this action
8 without further notice to plaintiff.

9 It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court
10 informed of any change of address by filing a separate paper with the clerk headed "Notice
11 of Change of Address." He must comply with the Court's orders in a timely fashion or ask
12 for an extension of time to do so. Failure to comply may result in the dismissal of this action
13 pursuant to Federal Rule of Civil Procedure 41(b).

14 **IT IS SO ORDERED.**

15 DATED: June 29, 2010

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17 RICHARD SEEBORG
18 United States District Judge
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